

DEPARTMENT OF STATE REVENUE

LETTER OF FINDINGS NUMBER: 02-0210P

Use Tax

Calendar Years 1998, 1999, and 2000

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUE(S)

I. Tax Administration – Penalty

Authority: IC 6-8.1-10-2.1(d); 45 IAC 15-11-2

Taxpayer protests the penalty assessed.

STATEMENT OF FACTS

Taxpayer is the operating company for two hotels in Indiana and has interest in hotels located out of state.

At audit, it was determined that the taxpayer failed to self assess and remit use tax for clearly taxable items such as office supplies, billboards, carpets, publications, consumable supplies, and other miscellaneous items.

I. Tax Administration – Penalty

DISCUSSION

Taxpayer protests the penalty assessed and states that the underpayment was minor as to the amount of use tax paid. However, taxpayer failed to self assess use tax on more than ninety percent (90%) of its purchases subject to use tax in all years of the audit.

45 IAC 15-11-2(b) states, "Negligence, on behalf of the taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana code or department regulations.

Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.”

Taxpayer failed to self assess and remit use tax on more than ninety percent of its purchases and has not provided reasonable cause to allow the department to waive the penalty.

FINDING

Taxpayer’s protest is denied.